

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1739 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Order ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHRI MANSUKHLAL SHANTILAL
VERSUS
GUJARAT ELECTRICITY BOARD

Appearance:

MR SM SHAH for the Petitioner

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order: 24/03/99

C.A.V. ORDER

1. On detection of theft of electricity at the establishment of the petitioner, the respondent NO.3 served a supplementary bill upon the petitioner. The petitioner availed of right of appeal under Condition

No.34 of Conditions of Supply of Electric Energy. by filing an appeal before the appellate committee. After depositing 30% of the amount of supplementary bill, the petitioner got the benefit of reconnection of the electricity supply as well as the deferment of the recovery of 70% of the amount of supplementary bill. The appellate committee under its judgment dated 29-1-1999 decided the appeal of the petitioner. The appeal was partly allowed. In pursuance of the appellate committee's judgment, revised supplementary bill to the tune of Rs.4,35,013-53 had been raised against the petitioner. Hence, this special civil application before this court.

2. Challenging the judgment of the appellate committee, learned counsel for the petitioner raised following contentions:

(i) In the revised supplementary bill, the respondents have not given the set off of full amount which has been deposited by the petitioner under Condition No.34 of the Conditions of Supply of Electric Energy. It is the contention of the learned counsel for the petitioner that the petitioner deposited Rs.48000/and odd as against which in the revised supplementary bill, the set off has been given of Rs.22,000/- and odd, which is incorrect.

(ii) Second contention has been raised that the working days of the factory has wrongly been taken to be 116 days. In fact, the factory of the petitioner, during this period, has worked only for 84 days and accordingly the relief should have been given to the petitioner. Carrying this contention further, learned counsel for the petitioner contended that the petitioner has produced before the appellate committee, the documents to show that the factory of the petitioner has only worked for 84 days during the period in question.

(iii) Lastly it is contended that the appellate committee has taken the factory of the petitioner as oil explorer but in fact it is an oil refinery.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

4. First, I consider it to be appropriate to take the last contention of the learned counsel for the petitioner. This contention is not available to the petitioner to be raised in this petition under Article

226 of the Constitution of India. It is a well settled law that in the petition under Article 226 of the Constitution, a litigation cannot be permitted to raise new point or new ground. It is a writ of certiorari and the petitioner can only raise those points to point out some error apparent on the face of the order which have been raised by him before the appellate committee. From the judgment of the appellate committee, I do not find that any such point has been raised by the petitioner before it. Whatever points which have been raised by the petitioner before the appellate committee, the same have been considered by the appellate committee and the findings have been given accordingly. From the judgment of the appellate committee, I find that this point has not been raised by the petitioner, and as such, this new point cannot be permitted to be raised. From the judgment of the appellate committee, I find that the petitioner has taken it to be a case of oil mill and not a refinery. Last point raised by the learned counsel for the petitioner is devoid of any substance.

5. So far as the other contention raised by the learned counsel for the petitioner that as against Rs.48000/- and odd deposited by the petitioner, in the revised supplementary bill the set off has been given of Rs.22000/- and odd is concerned, it is suffice to say that it is not an error in the judgment of the appellate committee. It is a matter where if what the petitioner stated is correct, it is a mistake or error committed by the bill issuing authority of the revised supplementary bill, for which this petition is not a remedy. It is a matter of correction of error or mistake. If it is really committed by the authority, the petitioner should have approached to the bill issuing authority rather than to come up before this court. This ground otherwise is not sustainable as it does not arise from the judgment of the appellate committee. However, it is open to the petitioner to point out this alleged error to the officer concerned and if it is so pointed, the officer concerned shall consider the same in accordance with law, and if it is really a mistake committed by the Board, it will accordingly rectify the same but only on this ground, no interference in the judgment of the appellate committee can be made.

6. So far as the last remaining ground is concerned, it is also devoid of any substance. The documentary evidence produced before this Court to show that the petitioner factory has worked only for 84 days is hardly of any substance. These documents are the petitioner's own documents and no authenticity or

reliance can be made. Such documents can be created any time. Learned counsel for the petitioner contended that these are entries from the record or the register to be maintained by the petitioner in pursuance of the orders framed under Essential Commodities Act, 1955. However, these entries have not been attested or certified to be correct by any officer or the District Collector or the District Supply Officer etc.. No authenticity or reliance on such documents can be placed. Learned counsel for the petitioner contended that these documents were produced by the petitioner before the appellate committee and the same have not been considered by it and this is a serious error in the judgment. I fail to see any justification in this contention. From the judgment of the appellate committee, I find that the committee has considered the contentions raised by the learned counsel for the petitioner on this point. It is true that very specifically these documents were not referred but for the reasons as aforesaid otherwise also these documents have no evidentiary value and no reliance can be made on the same. On this ground, I do not find it to be a fit case where the matter has to be remanded back to the appellate committee or this court should interfere with the judgment of the appellate committee. In accordance with law, whatever benefits of staggering days etc. the petitioner was entitled, the same has been given to him by the appellate committee. The appellate committee has passed a just and reasonable judgment, to which no exception can be taken.

7. In the result, this special civil application fails and the same is dismissed.

(S.K.Keshote,J)

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